

Honorable James L. Robart

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

RSR CORPORATION, QUEMETCO,
INC., and QUEMETCO REALTY,
INC.,

Defendants.

Civil Action No. C00-890-JRL

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Soil and Groundwater Operable Unit of the Harbor Island Superfund Site in Seattle, Washington ("the SGOU" or "the Site").

B. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of

1 this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent
2 Decree is fair, reasonable, and in the public interest.

3 THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED,
4 AND DECREED:

5 **II. JURISDICTION**

6 1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§
7 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling
8 Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling
9 Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue
10 in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's
11 jurisdiction to enter and enforce this Consent Decree.

12 **III. PARTIES BOUND**

13 2. This Consent Decree is binding upon the United States, and upon Settling Defendants, as well
14 as their successors and assigns. Any change in ownership or corporate or other legal status, including
15 but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or
16 responsibilities of Settling Defendants under this Consent Decree.

17 **IV. DEFINITIONS**

18 3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are
19 defined in CERCLA or in regulations promulgated pursuant thereto shall have the meanings assigned to
20 them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree
21 or in any appendix attached hereto, the following definitions shall apply:

22 a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation,
23 and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

24 b. "Consent Decree" shall mean this Consent Decree.

25 c. "Day" shall mean a calendar day. In computing any period of time under this Consent
26 Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until
27 the close of business of the next working day.

28 d. "DOJ" shall mean the United States Department of Justice and any successor

1 departments, agencies or instrumentalities of the United States.

2 e. "EPA" shall mean the United States Environmental Protection Agency and any
3 successor departments, agencies or instrumentalities of the United States.

4 f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance
5 Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

6 g. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic
7 numeral or an upper or lower case letter.

8 h. "Parties" shall mean the United States and Settling Defendants.

9 i. "Plaintiff" shall mean the United States.

10 j. "Response Costs" shall mean all costs, including but not limited to direct and indirect
11 costs, that EPA or DOJ on behalf of EPA has paid or will pay at or in connection with the Site, plus
12 accrued Interest on all such costs through such date.

13 k. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

14 l. "Settling Defendants" shall mean defendants RSR Corporation, Quemetco, Inc., and
15 Quemetco Realty, Inc.

16 m. "Site" shall mean the Soil and Groundwater Operable Unit of the Harbor Island
17 Superfund site, encompassing approximately 400 acres, located on Harbor Island, near downtown
18 Seattle, Washington.

19 n. "United States" shall mean the United States of America, including its departments,
20 agencies and instrumentalities.

21 **V. PAYMENT OF RESPONSE COSTS**

22 4. On October 13, 2005, pursuant to an Order of this Court dated October 11, 2005 ("the Court
23 Registry Order"), defendants paid Eight Million, Five Hundred Thousand Dollars (\$8,500,000.00) to the
24 Clerk of the Court, for deposit into an account at the Registry of the Court for the maintenance of funds
25 associated with this action. Within 30 days of entry of this Consent Decree, the Clerk of the Court shall
26 pay the \$8.5 million deposited pursuant to the Court Registry Order to a special account within the EPA
27 Hazardous Substance Superfund, in accordance with payment instructions to be delivered to the Clerk by
28 the Office of the United States Attorney for the

1 Western District of Washington.

2 5. At the time of payment, the Clerk shall also send notice that payment has been made to EPA
3 and DOJ in accordance with Section XI (Notices and Submissions). Such notice shall reference the EPA
4 Region and Site/Spill Identification Number 10-21, DOJ case number 90-11-2-970B, and the civil action
5 number 00-890-JLR.

6 **VI. COVENANT NOT TO SUE BY PLAINTIFF**

7 6. Covenant Not to Sue by United States. Except as specifically provided in Paragraphs 7-9, and
8 Section VII (Reservation of Rights by United States), the United States covenants not to sue or to take
9 administrative action against Settling Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. §
10 9607(a), to recover Response Costs. This covenant not to sue shall take effect upon receipt by EPA of
11 all payments required by Section V (Payment of Response Costs). This covenant not to sue extends only
12 to Settling Defendants and does not extend to any other person.

13 7. United States' Pre-certification Reservations. Notwithstanding any other provision of this
14 Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to
15 institute proceedings in this action or in a new action, or to issue an administrative order seeking to
16 compel Settling Defendants:

17 a. to perform further response actions relating to the Site; or

18 b. to reimburse the United States for additional costs of response if, prior to Certification
19 of Completion of the Remedial Action:

20 (1) conditions at the Site, previously unknown to EPA, are discovered; or

21 (2) information, previously unknown to EPA, is received, in whole or in part, and
22 EPA determines that these previously unknown conditions or information together with any other
23 relevant information indicates that the Remedial Action is not protective of human health or the
24 environment.

25 8. United States' Post-certification Reservations. Notwithstanding any other provision of this
26 Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to
27 institute proceedings in this action or in a new action, or to issue an administrative order seeking to
28 compel Settling Defendants:

- a. to perform further response actions relating to the Site; or
- b. to reimburse the United States for additional costs of response if, subsequent to

Certification of Completion of the Remedial Action:

- (1) conditions at the Site, previously unknown to EPA, are discovered, or
- (2) information, previously unknown to EPA, is received, in whole or in part, and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

9. For purposes of Paragraph 7, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the Record of Decision ("ROD") was signed and set forth in the ROD for the Site and the administrative record supporting the ROD. For purposes of Paragraph 8, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the ROD, the administrative record supporting the ROD, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

VII. RESERVATIONS OF RIGHTS BY UNITED STATES

10. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiff in Paragraph 6. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and

1 e. liability for damages for injury to, destruction of, or loss of natural resources, and for
2 the costs of any natural resource damage assessments.

3 **VIII. COVENANT NOT TO SUE BY SETTLING DEFENDANTS**

4 11. Settling Defendants covenant not to sue and agree not to assert any claims or causes of
5 action against the United States, or its contractors or employees, with respect to Response Costs or this
6 Consent Decree, including but not limited to:

7 a. any direct or indirect claim for reimbursement from the Hazardous Substance
8 Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2),
9 9607, 9611, 9612, or 9613, or any other provision of law;

10 b. any claim arising out of the response actions at the Site for which the Response Costs
11 were incurred, including any claim under the United States Constitution, the Constitution of the State of
12 Washington, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as
13 amended, or at common law; or

14 c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42
15 U.S.C. §§ 9607 and 9613, relating to Response Costs.

16 12. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of
17 a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

18 **IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

19 13. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause
20 of action to, any person not a Party to this Consent Decree. The Parties expressly reserve any and all
21 rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of
22 action that they may have with respect to any matter, transaction, or occurrence relating in any way to the
23 Site against any person not a Party hereto.

24 14. The Parties agree, and by entering this Consent Decree this Court finds, that Settling
25 Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution
26 actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters
27 addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are Response Costs
28 for the Site.

15. Each Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

16. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VI.

X. RETENTION OF RECORDS

17. Until 10 years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records, reports, or information (hereinafter referred to as “records”) now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

18. After the conclusion of the 10-year document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records to EPA. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name, title, affiliation (*e.g.*, company or firm), and address of the author of the record; 4) the name and title of

1 each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted.
2 If a claim of privilege applies only to a portion of a record, the record shall be provided to Plaintiff in
3 redacted form to mask the privileged information only. Settling Defendants shall retain all records that
4 they claim to be privileged until the United States has had a reasonable opportunity to dispute the
5 privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no
6 records created or generated pursuant to the requirements of this or any other settlement with the EPA
7 pertaining to the Site shall be withheld on the grounds that they are privileged.

8 19. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and
9 belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of
10 any records, reports, or information relating to its potential liability regarding the Site since notification
11 of potential liability by the United States or the State or the filing of suit against it regarding the Site and
12 that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and
13 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6972.

14 **XI. NOTICES AND SUBMISSIONS**

15 20. Whenever, under the terms of this Consent Decree, notice is required to be given or a
16 document is required to be sent by one party to another, it shall be directed to the individuals at the
17 addresses specified below, unless those individuals or their successors give notice of a change to the
18 other Defendants in writing. Written notice as specified herein shall constitute complete satisfaction of
19 any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and
20 Settling Defendants, respectively.

21 **As to DOJ:**

22 Bruce Gelber
23 Chief, Environmental Enforcement Section
24 U.S. Department of Justice
25 P.O. Box 7611
26 Ben Franklin Station
27 Washington, D.C. 20044
28

1 As to EPA:

2 Robert Hartman
3 Assistant Regional Counsel
4 United States Environmental Protection Agency
5 1200 Sixth Avenue, 15th Floor
6 Seattle, Washington 98101

7 Diane Norton
8 Finance Unit
9 EPA Region 10
10 1200 Sixth Avenue
11 Seattle, Washington 98101

12 As to Settling Defendants:

13 John A. DePaul
14 Senior Vice President Administrator
15 RSR Corporation
16 2777 Stemmons Freeway
17 Suite 1800
18 Dallas, Texas 75201

William Brewer III
Bickel & Brewer
1717 Main Street
Suite 4800
Dallas, Texas 75201

19 **XII. RETENTION OF JURISDICTION**

20 21. This Court shall retain jurisdiction over this matter for the purpose of interpreting and
21 enforcing the terms of this Consent Decree.

22 **XIII. INTEGRATION**

23 22. This Consent Decree constitutes the final, complete and exclusive agreement and
24 understanding among the Defendants with respect to the settlement embodied in this Consent Decree.
25 The Parties acknowledge that there are no representations, agreements or understandings relating to the
26 settlement other than those expressly contained in this Consent Decree.

27 **XIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

28 23. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for
public notice and comment. The United States reserves the right to withdraw or withhold its consent if
the comments regarding the Consent Decree disclose facts or considerations which indicate that this
Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of
this Consent Decree without further notice.

24 24. If for any reason this Court should decline to approve this Consent Decree in the form
25 presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement

1 may not be used as evidence in any litigation between the Parties.

2 **XV. SIGNATORIES/SERVICE**

3 25. Each undersigned representative of a Settling Defendant to this Consent Decree and the
4 Assistant Attorney General for the Environment and Natural Resources Division of the United States
5 Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this
6 Consent Decree and to execute and bind legally such Party to this document.

7 26. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this
8 Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling
9 Defendants in writing that it no longer supports entry of the Consent Decree.

10 **XVI. FINAL JUDGMENT**

11 27. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall
12 constitute the final judgment between and among the United States and the Settling Defendants. The
13 Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment
14 under Fed. R. Civ. P. 54 and 58.

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16 SO ORDERED THIS ____ DAY OF _____, 20__.

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19 UNITED STATES DISTRICT COURT
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1 THE UNDERSIGNED PARTY hereby enters into this Consent Decree in the matter of United States v.
2 RSR Corporation, No. 00-890-JLR (W.D. Wash.), relating to the Soil and Groundwater Operable Unit of
3 the Harbor Island Superfund Site.

4 FOR THE UNITED STATES OF AMERICA

5
6 12/22/05
Date

7 SUE ELLEN WOOLDRIDGE
Assistant Attorney General
8 Environment and Natural Resources Division
U.S. Department of Justice
9 Washington, D.C. 20530

10
11 Date

12 SEAN CARMAN
KATHERINE A. LOYD
13 FREDERICK S. PHILLIPS
Trial Attorneys
Environmental Enforcement Section
14 U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
15 Washington, D.C. 20044
16 (202) 514-3143

17 JOHN McKAY
United States Attorney
18 Western District of Washington

19 BRIAN KIPNIS
Chief, Civil Division
20 Environmental Enforcement Section
Environment and Natural Resources Division
21 U.S. Department of Justice
P.O. Box 7611
22 Washington, DC 20044-7611

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Date

Assistant Administrator for Enforcement and Compliance
Assurance
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Regional Administrator
Region 10
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101

ROBERT HARTMAN
Assistant Regional Counsel
U.S. Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101
(206) 553-0029

1 THE UNDERSIGNED PARTIES hereby enter into this Consent Decree in the matter of United States v.
2 RSR Corporation, No. 00-890-JLR (W.D. Wash.), relating to the Soil and Groundwater Operable Unit of
3 the Harbor Island Superfund Site:

4 FOR DEFENDANTS RSR CORPORATION,
5 QUEMETCO, INC., AND QUEMETCO
6 REALTY, INC.:

7
8 Date _____

9
10
11 Agent Authorized to Accept Service on Behalf of Above-signed Party:

12 Name: _____

13 Title: _____

14 Address: _____
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